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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 166

THE VILLAGE OF HIGHLAND FALLS, NEW YORK,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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The undersigned, on behalf of the Village of Highland Falls, New York, pray that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled case on February 7, 1949.

Opinion Below

The opinion of the Court of Claims (R. 14-21; 82 F. Supp. 516) has not yet been officially reported.

Jurisdiction

The judgment of the Court of Claims was entered on February 7, 1949 (R. 21). By order of the Chief Justice, dated April 28, 1949, the time for filing a petition for a

writ of certiorari was extended to and including July 6, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

Questions Presented

In 1931, the Congress was considering the enactment of legislation which would authorize the Secretary of War to acquire certain additional lands for the West Point Military Reservation. These lands included the watershed on which the Village of Highland Falls and other neighboring municipalities depended for their water supply. When the municipalities objected to the enactment of the legislation, the House committee to which the legislation had been referred suggested conferences between their representatives and the War Department looking toward a resolution of their differences. Such conferences were held, and, as a result, the Secretary of War agreed to assume certain obligations, among them the furnishing of water free to the petitioner village; and the village thereupon agreed to withdraw its objections to the legislation. Advised of that agreement, and in reliance on it, the Congress amended the pending bill by providing that nothing therein should "adversely affect the existing water supply, its sources, or pipe lines" of the municipalities involved, and so the bill was enacted. Upon alleged breaches of the agreement and consequent violation of the statute, the Village of Highland Falls sued for damages. On demurrer by the Government, the Court of Claims dismissed the suit for failure to state a cause of action. The questions presented are:

1. Whether the Court of Claims erred when, in testing the sufficiency of the petition on demurrer, it rejected, as incredible, facts well pleaded in the verified petition and, without permitting proof to be adduced,

relied on its own unsupported views as to what the facts really were.

2. Whether the agreement of the Secretary of War and the proviso in the statute imposed an obligation on the United States to comply with the terms of that agreement and rendered the Government liable for any breach thereof.

Statute and Agreement Involved

The Act of March 3, 1931, and the agreement of the Secretary of War of February 28, 1931, are set forth as Appendix A and Appendix B, respectively, to this petition, *infra*, p. 19 and p. 20.

Statement

In February, 1931, there were pending in the Third Session of the 71st Congress, three bills (H.R. 8480, H.R. 14811, and S. 5732), each of them providing for the specific grant of authority to the Secretary of War to acquire certain lands in Orange County in the State of New York to be added to the United States Military Reservation for use by the Military Academy at West Point (R. 1). The legislation had apparently been introducted at the request of the Secretary of War, who urgently pressed for its immediate enactment (H. Rept. 2723, 71st Cong., 3d sess., pp. 4-5). A considerable portion of the lands in question, however, constituted the watershed of the Village of Highland Falls, a municipal corporation within the Town of Highlands, New York, and at the hearings on the bills before the House Committee on Military Affairs, representatives of these municipalities vigorously opposed their passage (R. 2). The opposition was in part inspired by fears that the proposed acquisition by the War Department would reduce the area from which water could be obtained for the town and its constituent villages, would place the communities at

serious disadvantage in dealing with the privately owned water company, and would endanger the health, safety and welfare of the communities involved (Hearings before Committee on Military Affairs, House of Representatives, 71st Cong., 3d sess., on H.R. 8480, etc., *passim*).

In an effort to meet these objections, which were threatening the enactment of the measure at that session of the Congress, the chairman of the House Committee on Military Affairs suggested that conferences be held between the representatives of the War Department and the municipalities looking toward a compromise of their differences (R. 2-3). Such conferences were held, and, as a result, the then Secretary of War agreed to acquire the lands involved in a certain manner. The agreement was embodied in his letter of February 28, 1931 (Appendix B, *infra.*, p. 20), which reads, in part, as follows:

> "... the War Department will, insofar as it has legal authority, take all necessary steps to acquire the land upon which the water supply and system of the Village of Highland Falls is located, including the purchase, at a price mutually agreeable, of the interest therein which said village now owns in the watershed from which this supply is obtained. When the watershed is acquired the War Department will guarantee to said village of Highland Falls the right to the use of the water up to the capacity of the said village of Highland Falls' present watershed without charge ... *This statement is made to you for the purpose of obtaining your consent to the bill now pending and will not be binding on either party if said bill fails to be passed by the present Congress.*" (Italics supplied.)

Complying with their promise to the Secretary of War, the petitioner village and the other municipalities withdrew their opposition to the legislation and notified their representative in Congress, who thereupon consented to its

consideration on the unanimous consent calendar (R. 2-3, 74 Cong. Rec. 6780-6781).

The letter agreement of the Secretary of War was read in full to the House of Representatives when it came to consider the legislation (74 Cong. Rec. 6780-6782). The particular bill under consideration, S. 5732, was then amended to include the following proviso:

> "*Provided* that nothing herein contained shall adversely affect the existing water supply, its sources, or pipe lines of the Town of Highlands, New York,"

and in that amended form, it passed the House (74 Cong. Rec. 6781). The Senate thereupon concurred in the House amendment (74 Cong. Rec. 6666-6667), and the bill so modified became law on March 3, 1931 (Appendix A, *infra.*, p. 19).

It was not until July, 1942, that the Secretary of War proceeded to acquire the Orange County lands he had agreed and been authorized to acquire in 1931 (R. 3-4). In doing so, however, he did not comply with the aforementioned agreement of the parties in the following respects:

First, rather than effect "the purchase, at a price mutually agreeable, of the interest . . . which said (petitioner) village now owns in the watershed" (Appendix B, *infra.*, p. 20), the Secretary of War had that interest condemned in a court proceeding, and the village, despite its objection to such procedure, was awarded an amount less than the value of the land and not at all agreeable to it (R. 5-6).

Second, despite repeated demands by the petitioner village, the Secretary of War took no steps to acquire the lands upon which the water supply and water system of the village were located and thus was unable, as he had agreed in 1931, "to guarantee to said Village of Highland Falls the

right to the use of the water up to the capacity of the said Village of Highland Falls' present watershed without charge" (Appendix B, *infra*, pp. 20-21) (R. 6).[1] Because of the Government's failure to acquire these tracts on which were the source and facilities of the petitioner village's water supply, it became necessary for the village thereafter itself to purchase those lands and the water system located thereon, at a substantial cost and expense to the village (R. 7-8).

As a direct consequence of the Government's failure to honor its obligations under the agreement and statute, the petitioner, the Village of Highland Falls, New York, suffered damages in the sum of $300,000 (R. 7).[2]

On these facts duly alleged in its verified petition (R. 1-9), the petitioner village prayed the Court of Claims for a judgment against the United States in the amount of $300,000. The Government thereupon filed a demurrer to the petition and a plea of *res adjudicata* (R. 9-13). Briefs

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[1] The record does not indicate why this small acreage upon which the water supply and system are located was never acquired by the later Secretary of War. Whatever his reasons, the failure to acquire those tracts left them peculiar isolated islands in a large sea of Government property. The annexed map of the area (Appendix C, *infra*., facing p. 20) graphically displays this peculiar isolation; the tracts involved are designated Parcels "A," "B," and "C."

[2] The Act of June 12, 1948, c. 451, 62 Stat. —, P.L. 627, 80th Congress, 2nd session, authorized the payment of a lump sum in the amount of $85,000 to the Village of Highland Falls, New York, "as a contribution to the cost of construction of a water-filtration plant". The erection of such a plant was made necessary, however, as the appropriation expressly recognized, by the "increased turbidity of Highlands Brooks [one of the brooks from which the village drew its water], resulting from construction activities . . . undertaken by the Department of the Army in connection with the construction of a moving target range and golf course" on the portion of the watershed it had acquired. Congress has never appropriated any money, however, to compensate the petitioner village for any of the damages ensuing from the Government's refusal to acquire all the lands on which the water system is located or to satisfy the other obligations it had undertaken in 1931.

having been filed and argument heard, the Court of Claims, on February 7, 1949, rejected the plea of *res adjudicata* but upheld the demurrer and dismissed the petition (R. 14-21).

The Court, in substance, held that the Act of March 3, 1931 (*infra.*, pp. 18, 20) did not, in its proviso or elsewhere, incorporate by reference or authorize "the making of the promises made by the Secretary" in the agreement of February 28, 1931, and, therefore, that no violation of that statute was involved (R. 18). As to the agreement itself, the Court held that the promise to purchase the petitioner village's interest "at a price mutually agreeable" was ineffective as a contract because it was indefinite in its terms as to price (R. 18); and that the promise to purchase all the lands on which the water system supplying water to the village was located and to guarantee water to the village free of charge "was so remarkable that we have difficulty in believing that that is what the Secretary's letter really meant" or, if that was its intent, he had no authority to make such an agreement (R. 19). Without permitting the petitioner village to adduce proof or furnish a bill of particulars detailing the allegations of the petition, the Court dismissed the petition (R. 21).[3]

[3] The Government had also urged that the six-year statute of limitations barred the suit, viewing the claim as one based on a contract entered into on February 28, 1931. The Court of Claims, because it concluded that no valid contract was present, did not reach this question. We contend, first and primarily, that a cause of action was effectively stated for a violation of a statutory duty imposed on the Secretary of War as well as for the breach of a contractual obligation assumed by him. That violation occurred in 1942, and the suit was brought within six years thereafter. Even if the duty should be viewed as a contractual one, however, the breach still occurred in 1942, not in 1931.

Specification of Errors to be Urged

The Court of Claims erred:

1. In testing the sufficiency of the petition on demurrer by going beyond the petition and rejecting, as incredible, facts well pleaded therein.

2. In failing to hold that the Act of March 3, 1931, imposed a duty on the Secretary of War to purchase the interest which the petitioner village had in the lands acquired by the Government pursuant to that Act, at a price mutually agreeable to the village and the Government; and in holding that it did not impose that duty on him.

3. In failing to hold that the Act of March 3, 1931, imposed a duty on the Secretary of War to acquire the lands on which the petitioner village's water supply and the water system were located and to guarantee to the village the use of the water flowing through that system without charge; and in holding that it did not impose that duty on him.

4. In holding that the agreement of the Secretary of War, evidenced by his letter of February 28, 1931, was an invalid agreement, for whose breach the Government was not liable to damages; and in failing to hold that said agreement was valid and enforceable.

5. In holding that no claim under the Act of March 3, 1931, is stated in the petition below.

6. In failing to hold that a cause of action cognizable and triable in the Court of Claims was stated in the petition below; and in holding that such a cause of action was not there stated.

7. In upholding the demurrer of the Government and in dismissing the petition below.

Reasons for Granting the Writ

The Court of Claims has tested the Government's demurrer and the sufficiency of the petition below by refer-

ence not to the facts alleged in the petition itself, but rather by reference to its own views as to which of those facts could be proved. In that frame of reference, it has dismissed a petition and sanctioned a repudiation of an undertaking deliberately assumed by the Secretary of War, relied on to its detriment by the petitioner village, and ratified and confirmed by an act duly passed by a Congress fully aware of the agreement. And, thus, without affording them a day in court, the Court of Claims has left remediless a community of 4,000 people, which, relying upon the *bona fides* of an undertaking by the Federal Government, had surrendered their only effective means, by petition to Congress, of defeating legislation that seriously affected the health and welfare of the village and its citizens.

The situation before this Court is not one where the Government has gone into the market place to secure goods and services through the medium of bargain and sale, but rather one which involved a solemn agreement made in the name of the sovereign by a delegee of the Chief Executive (see R. S. sec. 216, 5 U. S. C. 90), to which has been added the dignity of Congressional interest, sanction, and ratification; in such a situation, standards of conduct, honor, and recognition much higher than normally accompany ordinary commercial transactions should govern. The decision of the Court of Claims here, diastrous in its consequence to the petitioner village, is grounded on so mistaken a conception of the function of a court on demurrer, of the nature of the legislative process, and of the sanctity of contracts, that it urgently requires review and correction by this Court.

1. The basic error of the Court of Claims lies in its utter misconception of the role of the demurrer and in its abuse of the judicial function in the face of such a pleading.

As Mr. Justice Brandeis pointed out, in *Portsmouth Co.* v. *United States*, 260 U. S. 327, 331 (dissenting), when a demurrer is interposed in the Court of Claims, the facts set forth in the petition must "be taken as the ultimate facts; and they must be treated as are the findings of fact made by the Court of Claims. These are treated like a special verdict and not as evidence from which inferences may be drawn." Accord: *Kendall* v. *United States*, 7 Wall. 113, 116; *Concordia Ins. Co.* v. *School District*, 282 U. S. 545. Moreover, every intendment of the petition must be taken in favor of the plaintiff. *Kellogg Co.* v. *National Biscuit Co.*, 71 F. 2d 662, 666 (C. C. A. 2). And if "the petition sets forth facts well pleaded, which if found by the lower court would as a matter of law entitle the claimants to a judgment," the Court of Claims must overrule the demurrer and sustain the petition. *Portsmouth Co.* v. *United States*, *id.* at 331.

These elemental principles, the Court of Claims has completely disregarded. Read the pleadings and the opinion below, and it is plain that rather than accept the allegations in the petition, as it was bound to do for purposes of the demurrer, the Court rejected them as unbelievable (see R. 19) and, in effect, decided the case on its own view of and inferences from the facts.

The petition alleges the following: On February 28, 1931, in an effort to procure the petitioner's consent to certain enabling legislation, the Secretary of War agreed that the War Department would "take all necessary steps to acquire the land upon which the water supply and system of the Village of Highland Falls is located, including the purchase at a price mutually agreeable, of the interest therein which said Village now owns in the watershed from which this supply is obtained" and to "guarantee to said Village of Highland Falls the right to the use of the water up to the capacity of the said Village of Highland Falls' present

water-shed without charge" (R. 2-4, 11-12). This agreement by the Secretary of War was expressly "made to you for the purpose of obtaining your consent to the bill now pending" and was expressly stated to be conditional on the bill passing the then session of Congress (R. 3). In conformance with the agreement, the petitioner village did withdraw its objections to the bill and did consent to its enactment; the agreement was made known to the Congress; and the bill did in fact pass that session (R. 3). The statute, as enacted, confirmed the agreement of the War Department (R. 3). Despite such action, the Government failed to carry out its obligations under the agreement and the statute, and the petitioner, as a consequence, was damaged to the extent of $300,000 (R. 3).

Can there be any question that these allegations constitute a good cause of action, well within the cognizance of the Court of Claims, and that the petition should, therefore, have been upheld on demurrer? It is noteworthy that nowhere in its demurrer or in the brief filed in support thereof did the United States question the truth of any of those allegations. Notwithstanding this, the Court of Claims assumed the guise of a trier of the facts, rather than of a judge of the sufficiency of the petition; and rather than determine whether the facts, as pleaded, constitute a cause of action, it decided that the allegations could not be proved. and this before the petitioner village was even given an opportunity to submit any proof whatever.

The opinion is replete with statements reflecting that attitude by the Court. Thus, considering the allegations with respect to the agreement of the Secretary of War in 1931, the Court says ". . . we have difficulty in believing that that is what the Secretary's letter really meant . . ." (R. 19). Again, although the petition alleges in so many words that, as a result of the Government's breach, the petitioner was compelled to expend funds to accomplish the

end which the Secretary had agreed the Government would accomplish for it (R. 6), the court again says ". . . no damage from its breach is adequately alleged . . ." (R. 19). Once more, although it recognizes that the proviso in the Act of March 3, 1931, and the provisions of the letter agreement of February 28, 1931, are by no means clear (R. 20), the court assumes a construction of the statute and interpretation of the agreement contrary to those pleaded (R. 20), without giving the petitioner an opportunity, by resort to extrinsic evidence, as is customary, to prove the actual intent of the parties. *United States* v. *American Trucking Ass'ns*, 310 U. S. 334; *Scott* v. *United States*, 12 Wall. 443. However, the meaning of a contract and of an act of Congress "can only be derived from a considered weighing of every relevant aid to contruction." *United States* v. *Dickerson*, 310 U. S. 554, 562.

The petition filed in the Court of Claims, alleging the circumstances attending the February 28, 1931 letter and the Act of March 3, 1931, sets forth clearly a meaningful pattern of conduct by the United States, on the one hand, and the petitioner village, on the other. The petition, of course, did not plead evidentiary matter; the rules do not require that it do so. If any of the allegations were deemed not properly or adequately set forth, justice would have required that the petitioner village be given an opportunity to replead or to furnish a bill of particulars. It is significant to note that no objection to the manner of pleading was at any point raised by the Government. The Court, having before it only the petition, with its bare allegations, could hardly have determined what the parties really meant or intended or what was "remarkable" or credible in the petition (R. 19). Yet that is just what it did here. Abusing the functions of a court on demurrer, it drew inferences from the alleged facts rather than accept them and determine whether, if they could be proved, they "would require or

at least warrant" a finding in favor of the plaintiff. *Portsmouth Co.* v. *United States,* 260 U. S. 327, 329 (per Holmes, J.).[4]

Having improperly assumed the role, on mere demurrer, of trying the facts without proof, the Court of Claims denied to the petitioner village the traditional day in court to which all litigants, particularly claimants against the Government, are entitled. The decision below is plainly in conflict with well-established and controlling decisions of this Court. *Portsmouth Co.* v. *United States,* 260 U. S. 327; *Kendall* v. *United States,* 7 Wall. 113; *Concordia Ins. Co.* v. *School District,* 282 U. S. 545. For that reason alone, a writ of certiorari should issue and the judgment below should be reversed.

2. The statute here in question is the Act of March 3, 1931, *infra.*, p. 19. That statute authorized the Secretary of War to acquire certain lands in Orange County, New York, but only on condition that his acquisition should not "adversely affect the existing water supply, its sources, or pipe lines of the town of Highlands, New York." Finding no allegation in the petition that anything had been done under the act which has "adversely affected the water supply," the Court of Claims concluded that no "claim

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[4] The inquiry into the authority of the Secretary of War to have entered into the agreement with the petitioner village, so far as it was pertinent here, was governed, at this stage of the case, by the established presumption that in the absence of a statute or regulation to the contrary, acts done by the Secretary of War in the business of the War Department are done pursuant to the direction and authority of the President (R.S. sec. 216, 5 U.S.C. 190; *Wilcox* v. *Jackson,* 13 Pet. 498, 513; 7 Op. Atty. Gen. 453; 10 Op. Atty. Gen. 171). The petitioner having set forth a duly executed agreement by the Secretary of War, the burden was on the Government to rebut the presumption of regularity which attended it. Cf. *United States* v. *Chemical Foundation,* 272 U. S. 1. Not only did the Government not rebut the presumption, but, what is more significant, it never questioned the authority of the Secretary to enter into the agreement in question.

under the proviso of the Act is, therefore, stated in the plaintiff's petition" (R. 18).

The very crux of the petition, however, is the charge that when it acquired additional lands in Orange County in 1942, the Government did so in contravention of the provisions of that very statute of March 3, 1931 (R. 5-6). This basic portion of the petition, the Court of Claims completely disregards.

As the petition alleges (R. 7), the agreement, evidenced by the letter of February 28, 1931, was an integral part of the legislative process which culminated in the enactment of the March 3 statute. In the form in which it was originally proposed, the legislation made no provision for protection of the petitioner village's water supply (74 Cong. Rec. 3181). The village and the Town of Highlands, of which it was a part, therefore, vigorously opposed the bill (Hearings before the Committee on Military Affairs of the House of Representatives on H. R. 8480, H. R. 14811, and S. 5732, 71st Cong., 3d sess., *passim*). The War Department, however, deemed enactment at that very session imperative (*ibid;* and see H. Rept. 2723, 71st Cong., 3d sess., p. 5), and the House Committee on Military Affairs, before whom the objections were voiced, therefore suggested conferences between the representatives of the municipalities and the War Department where they might endeavor to resolve their differences (R. 2-3). Out of these conferences came the undertaking by the Secretary of War embodied in the February 28 letter (R. 3). That letter was read in full to the Congress by Representative Fish of New York, who considered it as "giving satisfactory assurance of the use of water without charge to the village of Highland Falls and the hamlet of Fort Montgomery, and that no land would be acquired east of the main highway between Highland Falls and Fort Montgomery until July 1, 1932, provided

the bill is enacted into law" (74 Cong. Rec. 6781). Representative Fish then stated (*ibid.*):

> "The above letter from the Secretary of War is sufficient guaranty that the provisions of the bill will be scrupulously carried out in every detail. I have implicit faith that the War Department will exert every means in its power to see that both the letter and the spirit of the bill are put into effect. I have the personal assurance of Mr. James of Michigan, chairman of the Committee on Military Affairs, and sponsor of the bill, that he will cooperate and insist on the complete fulfillment of every provision of the bill".

Only on being advised of this agreement by the Secretary of War, as stated in the Secretary's letter of February 28, and only in reliance on performance of that agreement, did Representative Fish consent to consideration of the bill at that session and was the bill passed by the House (74 Cong., Rec. 6780-6782).

In those circumstances, the "conclusion is inescapable that Congress, by the Act" of March 3, 1931, "ratified and confirmed" the Secretary's letter of February 28, 1931. *Hirabayashi* v. *United States,* 320 U. S. 81, 91. Here, again, as in the *Hirabayashi* case, was an example of the executive and the Congress "acting in cooperation." *Id.* at 91-92. By such action in *Hirabayashi,* obligations were imposed on private citizens, for whose breach they were convicted and imprisoned. By similar "action in cooperation" here, obligations were imposed on the executive officers of the Federal Government, and there is no less reason for the courts to command that they too respect the statutory mandates and to decree compensation for injuries occasioned by their disregard of such mandates.

In dismissing the petition below on demurrer, the Court of Claims denied to the petitioner village the opportunity to prove the legislative design which it alleged was reflected

in the March 3, 1931 measure. Resort to legislative history to dispel whatever ambiguity may characterize the proviso in question, "*Provided*, that nothing herein contained shall adversely affect the existing water supply, its sources, or pipe lines of the Town of Highlands, New York," is quite appropriate. *United States* v. *C. I. O.*, 335 U. S. 106, 113. In the search for Congressional intent, the expressions of the agency actively sponsoring the legislation (*Shapiro* v. *United States*, 335 U. S. 1, 12, note 13) and the deliberations of the Congressional committee considering the legislation (*Ex parte Joseph Collett*, No. 206 Misc., Oct. 1948 Term, May 31, 1949) are of particular import.

Had this case been permitted to go to trial, and had the petitioner village been successful, as we urge it would have been, in demonstrating such a relationship between the agreement among the parties and the proviso in the statute as to make it plain that the statute imposed duties on the Secretary of War consistent with that agreement, a "construction consistent with good faith on the part of the United States" would have been compelled and such an interpretation should have been favored. *United States* v. *Taylor*, 104 U. S. 216, 221. On the other hand, the construction afforded the statute by the Court of Claims makes meaningless and impotent the proviso in the statute and the legislative processes preceding it—the conferences among the parties, the letter of the Secretary, the considerations by the Committee, and the reading of the letter before the House of Representatives.

If the proviso had any meaning at all, it was that the petitioner village should receive what the Secretary had agreed it should; and there can be no serious question that it did not receive that here. When the village's lands were condemned rather than purchased at a mutually agreeable price; and when the War Department, for reasons which do not appear, chose to carve out from the huge area ac-

quired, the small tracts on which the village's water works were located and, thus, compelled the village to pay for its water rather than procure it free of charge; the Government plainly breached the terms of the agreement and the statutory proviso.

3. On the theory of the suit outlined above, it would be unnecessary to consider whether the Secretary of War had authority to make the promises he did in 1931, for since a statutory duty was imposed on him, he was bound to comply with it notwithstanding his written undertaking. Even on the theory of contract, however, we submit that the Court of Claims erred.

Whatever the authority of the Secretary of War may have been when he signed the letter of February 28, 1931, embodying the understanding of the parties (see f.n. 4, p. 13, *supra*), his act in doing so and the promises there expressed were ratified by the enactment of the March 3, 1931 statute with the proviso reflecting those promises. In short, ". . . there was complete ratification by Congress, which eliminates any possible previously existing lack of authority." *United States* v. *City of New York*, 45 F. Supp. 226, 235 (S. D. N. Y.), *affd.* 131 F. 2A909 (C.C.A. 2), *cert. den.* 318 U. S. 781; *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 622; *Charlotte Harbor & N. Ry. Co.* v. *Welles*, 260 U. S. 8, 11; *United States* v. *Heinszen & Co.*, 206 U. S. 370, 382.

Such Congressional ratification and affirmation of the undertaking by the Secretary cured not only a want of authority, if such there was, but all other infirmities as well—such as indefiniteness and lack of adequate consideration—to which the undertaking may have been subject before. For, there can be little question, of course, that Congress may, if it so desires, render fully effective and enforceable against the Government, obligations which

might otherwise prove unenforceable under the doctrines of the common law. Compare, for example, Section 17 of the Contract Settlement Act of 1944, July 1, 1944, c. 358, sec. 17, 58 Stat. 665, 41 U.S.C. 117.

Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX A

Act of March 3, 1931, 46 Stat. 1491

Chap. 408. An Act To authorize the acquisition for military purposes of land in Orange County, New York, for use as an addition to the West Point Military Reservation.

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the Secretary of War is hereby authorized to acquire, by purchase, condemnation, or otherwise, additional land in the vicinity of, and for use by, the United States Military Academy, in connection with the present military reservation at West Point, New York, such land being fifteen thousand one hundred and thirty-five acres, more or less, and including land surrounding Popolopen Lake, land bordering on the River Hudson, and other interlocking plots of land, all located in Orange County, New York; and the sum of $1,500,000 is hereby authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, which sum shall remain available until expended: Provided, That nothing herein contained shall adversely affect the existing water supply, its sources, or pipe lines of the town of Highlands, New York.

Sec. 2. The Secretary of War shall, by due advertisements in such manner as he deems best and calculated to give the widest necessary publicity, call for offers of land for use in connection with said West Point, New York, and if after negotiation he is able to buy said land or any part or parcel or tract thereof, and at such price or prices as he shall deem to be the fair and reasonable market value of the land, then he is authorized to purchase said land for said purpose at such prices; and if any of said offers of land are at prices deemed by the Secretary of War to be above the reasonable market value of such parcel or tract of land, and if after the negotiation the Secretary of War is unable to purchase the same at fair and reasonable prices as herein defined, then in such case the Secretary of War is authorized to request the Attorney General of the United

States to institute condemnation proceedings for the acquiring of such tracts or parcels of land as may be necessary for such purpose. Approved March 3, 1931.

APPENDIX B

Washington, February 28, 1931.

To the Board of Trustees,
Village of Highland Falls, New York.

Town Board
Town of Highlands, New York.

Board of Education,
Union Free School District No. 2,
Town of Highlands, New York.

GENTLEMEN: It has been brought to the attention of the War Department that the municipal interests which you represent are apprehensive that under the provisions of a bill now pending in Congress, H. R. 14811, S. 5732, certain lands in the Town of Highlands, New York, which now bear a considerable portion of the assessed taxes of your respective municipalities will be taken by the United States Government, thus depriving said municipalities of the taxes upon the same.

You are advised that should the measure above referred to be enacted into law, the War Department will not, under the authority therein contained, acquire title to any lands or property east of U.S. Highway Route 9W as it now lies in said Town of Highlands, and Village of Highland Falls, New York, within a period of five years from July 1, 1932.

Immediately after July 1, 1932, the War Department, will insofar as it has legal authority, take all necessary steps to acquire the land upon which the water supply and system of the Village of Highland Falls is located, including the purchase at a price mutually agreeable, of the interest therein which said Village now owns in the watershed from which this supply is obtained. When the watershed is acquired, the War Department will guarantee to said Village

of Highland Falls the right to the use of the water up to the capacity of the said Village of Highland Falls' present water-shed without charge.

The War Department will also permit the settlement known as Fort Montgomery in the said Town of Highlands to tap the West Point pipe line free of charge to supply the necessary water for all domestic purposes provided that such connection with the pipe line will be made in a manner which will not impair the water supply to West Point.

This statement is made to you for the purpose of obtaining your consent to the bill now pending and will not be binding on either party if said bill fails to be passed by the present Congress.

Sincerely yours,

PATRICK J. HURLEY,
Secretary of War.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 166

THE VILLAGE OF HIGHLAND FALLS, NEW YORK,
PETITIONER

v.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 14-21) is reported at 82 F. Supp. 516.

JURISDICTION

The judgment of the Court of Claims was entered on February 7, 1949 (R. 21). On April 28, 1949, the Chief Justice extended the time within which petitioner might file a petition for certiorari to July 6, 1949 (R. 21). The petition for certiorari

was filed on July 6, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1255(1).

QUESTION PRESENTED

Whether the proviso to section 1 of the Act of March 3, 1931, 46 Stat. 1491, constituted a ratification by the United States of certain promises allegedly made by the Secretary of War to petitioner in a letter of February 28, 1931.

STATUTE INVOLVED

Section 1 of the Act of March 3, 1931, 46 Stat. 1491, provides:

> * * * That the Secretary of War is hereby authorized to acquire, by purchase, condemnation, or otherwise, additional land in the vicinity of, and for use by, the United States Military Academy, in connection with the present military reservation at West Point, New York, such land being fifteen thousand one hundred and thirty-five acres, more or less, and including land surrounding Popolopen Lake, land bordering on the River Hudson, and other interlocking plots of land, all located in Orange County, New York; and the sum of $1,500,000 is hereby authorized to be appropriated, which sum shall remain available until expended: *Provided,* That nothing herein contained shall adversely affect the existing water supply, its sources, or pipe lines of the town of Highlands, New York.

STATEMENT

Petitioner filed a petition in the Court of Claims seeking damages of $300,000 plus interest (R. 1-7).

The Government demurred because the petition failed to state a cause of action (R. 9-13), and the court dismissed the petition (R. 21).

The allegations of the petition may be summarized as follows:

Petitioner is a municipal corporation located in the Town of Highlands, New York. On February 12, 1931, a subcommittee of the Committee of Military Affairs of the House of Representatives held hearings upon proposed legislation authorizing the Secretary of War to acquire certain lands for the United States Military Academy (R. 1). Representatives of petitioner and of the Town opposed the legislation on the ground that acquisition of the lands would adversely affect petitioner's water supply (R. 2).

At the direction of the subcommittee chairman, representatives of the War Department and of the protesting municipalities conferred for the purpose of agreeing upon measures necessary to protect the municipalities. To meet the lattter's objections the Government representatives agreed to have inserted in the legislation a proviso that "nothing herein contained shall adversely affect the existing water supply, its sources or pipelines of the Town of Highlands, New York." (R. 2.) A letter dated February 28, 1931, signed by the Secretary of War, was delivered to the municipalities (R. 3). This letter (Ex. A, R. 8-9) stated that:

> Immediately after July 1, 1932, the War Department will, insofar as it has legal author-

> ity, take all necessary steps to acquire the land upon which the water supply and system of the Village of Highland Falls is located, including the purchase, at a price mutually agreeable, of the interest therein which said village now owns in the watershed from which this supply is obtained. When the watershed is acquired, the War Department will guarantee to said Village of Highland Falls the right to the use of the water up to the capacity of the said Village of Highland Falls's present watershed without charge.
>
> * * * * *
>
> This statement is made to you for the purpose of obtaining your consent to the bill now pending and will not be binding on either party if said bill fails to be passed by the present Congress.

The proviso was included in the bill. In reliance upon the agreement and letter the municipalities withdrew their objections and the legislation became the Act of March 3, 1931, 46 Stat. 1491.

It was alleged that the United States broke its agreement with petitioner in the following respects: First. Petitioner owned a tract of about 400 acres in the watershed from which its water was obtained. Instead of purchasing this land at a "price mutually agreeable", the United States condemned it at a price less than that contemplated by the parties and at less than its fair value.[1] Second. The United States did not acquire the land on

[1] On petitioner's appeal, the judgment in condemnation was affirmed. *United States* v. *Village of Highland Falls*, 154 F. 2d 224 (C.A. 2). Concerning the alleged contract, the court said (p. 226): "With the validity of that contract, we have no con-

which the water supply and system were located. This land was owned by the Citizens Waterworks Company. Petitioner acquired it at considerable expense. Third. The United States did not offer to make available to petitioner the right to use water without charge or on any other basis. (R. 5-6.)

In its opinion the Court of Claims pointed out: The Secretary's letter did not confer any rights upon petitioner: First, the promise to acquire the 400 acre tract at a "price mutually agreeable" was obviously unenforceable because it fixed no way, except further agreement, of arriving at a price (R. 18-19). Second, so long as the privately owned waterworks continued to furnish water to petitioner, it was not damaged by the Government's failure to acquire the waterworks (R. 19). Third, if the Secretary of War had promised to acquire the waterworks for the purpose of operating them in perpetuity for a municipality, the promise was not authorized by statute and consequently was invalid (R. 19-20). In enacting the Act of March 3, 1931, Congress did not ratify the letter; "it put in the statute only the proviso * * * and neither incorporated by reference nor authorized the making of the promises made by the Secretary" (R. 20).

ARGUMENT

An examination of the opinion below shows that there is no basis for petitioner's contention (Pet. 2,

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cern, the Village is of course free to sue upon it whenever it chooses; but its existence is altogether irrelevant in this proceeding."

8-13) that the Court of Claims disregarded the allegations of the petition as to the terms of the purported contract. This contention appears to rest upon the fact that the court expressed incredulity that the Secretary of War intended to promise "to buy a waterworks and system of pipes which were not to be used for any Government purpose, and to operate the works and system, apparently in perpetuity, to furnish free water to a municipality which had been buying its water from a private owner of the same works and system before" (R. 19). What the court below did, however, was to assume the truth of the allegations and to hold that the Secretary had no authority to make the alleged promise.

On the merits, the sole contention of the petitioner here is that the proviso to section 1 of the Act of March 3, 1931, authorized the Secretary to make such a commitment (Pet. 3, 13-18). The proviso declares: "That nothing herein contained shall adversely affect the existing water supply, its sources, or pipe lines of the town of Highlands, New York." This language does not in terms incorporate a promise to buy a waterworks and operate it for petitioner's benefit; it merely prohibits any damage to the existing water supply. And, as the Court of Claims pointed out (R. 19), the petition did not assert that anything done under the Act adversely affected the water supply.

Petitioner's interpretation of the proviso rests upon its version of part of the legislative history.

It asserts that before the legislation passed the House of Representatives the letter was read to that body by one of its members,[2] that he ascribed to it the meaning and effect for which petitioner contends, and on the basis of that understanding withheld objection to immediate passage of the bill (Pet. 5, 9, 11, 14-15). If the account is correct, the member in question may have misunderstood the proviso. But such a mistake on his part could not change the clear meaning and effect of the legislation. *Pine Hill Co.* v. *United States,* 259 U. S. 191, 196.

CONCLUSION

The decision below raises no questions of general importance which warrant review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

A. DEVITT VANECH,
Assistant Attorney General.

JOHN F. COTTER,
Attorney.

SEPTEMBER, 1949.

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[2] Petitioner asserts (Pet. 5) that the proviso was inserted after the letter was read to the House. On the contrary, the proviso was in the bill when it was reported to that body. H. Rept. No. 2723, 71st Cong., 3d Sess.; 74 Cong. Rec. p. 6780. It is not clear that the letter was read to the House. It appears in the course of an extension of remarks by the member. 74 Cong. Rec. pp. 6781-6782.

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